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No. 82-736

In the Supreme Court of the United States

OCTOBER TERM, 1982

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

v.

HEARTLAND FOOD WAREHOUSE, A DIVISION OF PURITY SUPREME SUPERMARKETS,
RESPONDENT.

RESPONDENT'S MEMORANDUM IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Statement of the Case

On October 28, 1982, the Petitioner, the National Labor Relations Board, through the Solicitor General, filed its petition for a writ of certiorari in the instant case,[1] in which, after it set out its reasons for this Court's granting the petition

[1] The opinion of the Court of Appeals below, rendered June 1, 1982, is reported at 685 F.2d 421.

(p. 7),[2] it concluded by urging that "The petition for a writ of certiorari should be held and disposed of in light of the disposition of *NLRB* v. *Transportation Management Corp.* No. 82-168." At the time, the Government had filed its petition in *Transportation Management*, but this Court had not yet acted upon it. As Petitioner in the instant case it urged (p. 7) that the same issue was raised in *Transportation Management* as here.[3]

Thereafter, on November 15, 1982, this Court granted the petition for certiorari in *Transporation Management*.[4] In light of that, the Court has directed the filing of a response by the Respondent herein.

Statement of Position

The Respondent does not oppose the disposition of the instant petition as urged by the Petitioner in the Conclusion of its petition, *supra*. More precisely, the Respondent does not object to the Court's holding the instant petition and disposing of it in light of such decision as may be forthcoming in *Transportation Management*, simply in recognition of the Court's discretion to hold petitions generally until a decision is reached in a pending case raising either identical or related issues.[5]

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[2] As used herein, page numbers within parentheses are to the aforementioned petition for writ of certiorari.

[3] The Petitioner correctly states that the broad legal issue is the same to the extent that it involves decisions of the First Circuit dealing with burdens of proof under its test in *NLRB* v. *Wright Line, A Division of Wright Line, Inc.*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982). However, the fact situation in *Transportation Management* is so different from that here that the decision of the Court in that case may not necessarily prove dispositive here.

[4] 51 USLW 3378.

[5] R. Stern & E. Gressman, *Supreme Court Practice* (5th ed. 1978), p. 360.

However, the Respondent reserves the right to file a further response after the Court has rendered its decision in *Transportation Management*, the substance of which would be known only after, and in light of, such decision, but which could include a counterstatement of the case and argument with respect to distinguishing any such decision and questioning its application to the instant case.

Respectfully submitted,

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